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12 **GEORGE GONZALEZ,** Case No. 5:25-cv-00331-KK-DTB
13 Plaintiff,
14 v.
15 **STATE DEFENDANTS' REPLY**
TO PLAINTIFF'S OPPOSITION
TO MOTION TO DISMISS THE
FIRST AMENDED COMPLAINT
16 **STATE OF CALIFORNIA; CITY**
OF HEMET; PATRICK
SOBASZEK; ANDREW REYNOSO;
SEAN IRICK; and DOES 1-10,
17 **inclusive,** Date: May 8, 2025
18 Defendants. Time: 9:30 a.m.
19 Courtroom: 3
Judge: Honorable Kenly Kiy
Kato
Trial Date: Not yet set.
Action Filed: 12/24/2024

20 Defendants, State of California, acting by and through the California Highway
21 Patrol (CHP) and Officer Sean Irick (collectively the State Defendants), provide the
22 following reply to Plaintiff's Opposition to their Motion to Dismiss.

23 || L. INTRODUCTION

24 In his opposition to the motion to dismiss, Plaintiff relies on conclusory
25 allegations unsupported by facts alleged in the FAC in an attempt to overcome the
26 State Defendants' motion. Plaintiff's opposition fails to establish that he has alleged
27 facts demonstrating a violation of his Fourth Amendment rights, battery,
28 negligence, or a violation of the Bane Act (Cal. Civ. Code §52.1) against the State

1 Defendants. For these reasons, as well as those identified in the State Defendants'
2 motion to dismiss, their motion to dismiss should be granted.

3 **II. ARGUMENT**

4 **A. The FAC Fails to Allege Sufficient Facts Against Officer Irick to
5 Support a Fourth Amendment Violation**

6 Although a complaint need not include detailed factual allegations, it "must
7 contain sufficient factual matter, accepted as true, to 'state a claim to relief that is
8 plausible on its face.'" *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011)
9 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). As set forth in the State
10 Defendants' Motion to Dismiss, this analysis under *Graham* requires "careful
11 attention to the facts and circumstances of each particular case, including the
12 severity of the crime at issue, whether the suspect poses an immediate threat to the
13 safety of the officers or others, and whether he is actively resisting arrest or
14 attempting to evade arrest by flight." *Graham v. Conner*, 490 U.S. 386, 396 (1989).
15 The most important consideration is whether objective factors show that the suspect
16 posed an immediate threat to the safety of law enforcement officers and others. *Id.*
17 In *Tennessee v. Garner*, 471 U.S. 1, (1985), the Supreme Court held that a police
18 officer may not use deadly force "unless it is necessary to prevent escape and the
19 officer has probable cause to believe that the suspect poses a significant threat of
20 death or serious physical injury to the officer or others." *Id.* at 3. Thus, where a
21 suspect threatens an officer with a weapon such as a gun or a knife, the officer is
22 justified in using deadly force. *Smith v. City of Hemet*, 394 F.3d 689, 704 (9th Cir.
23 2005).

24 Plaintiff's First Amended Complaint (FAC) lacks sufficient facts to support a
25 Fourth Amendment violation as it completely omits circumstances surrounding the
26 events leading up to the shooting, which are necessary to determine whether the
27 actions of the State Defendants were reasonable, the circumstances surrounding
28 Plaintiff's escape from officers, and whether Plaintiff posed an immediate threat to

1 the safety of the officers or members of the public. Plaintiff claims that State
2 Defendants were “not responding to a serious or violent crime, the Defendants did
3 not have any information that Plaintiff Gonzalez had just committed or was about
4 to commit a serious or violent crime and had no information that Plaintiff Gonzalez
5 had just harmed or was threatening to harm any person or law enforcement officer.”
6 (FAC at ¶24.) However, a plaintiff must allege that a defendant’s use of force was
7 objectively unreasonable “in light of the facts and circumstances confronting the
8 officer...” *Graham*, 490 U.S. at 397. (emphasis added.) Plaintiff’s generalized
9 allegations lack the necessary factual content to outline the facts and circumstances
10 confronting the State Defendant officers prior to the officer-involved shooting.

11 Plaintiff also argues that Officer Irick caused him “great fear, pain and harm,”
12 by Irick’s alleged “unreasonable and negligent tactics prior to, during, and after his
13 use of deadly force, including but not limited to poor positioning, poor planning,
14 lack of communication with other officers, deficient communication with Plaintiff,
15 unreasonable force, escalating the situation, and failing to de-escalate the
16 situation...” (Opposition, at 3; FAC at ¶¶32-33). Yet facts relating to tactics prior to
17 the shooting, including Defendants’ positioning, their communication with other
18 officers, communication with Plaintiff, and any efforts to de-escalate the situation
19 are completely absent from the FAC. Furthermore, Plaintiff argues that Officer
20 Irick’s alleged use of force against him was excessive and unreasonable because
21 “prior to and at the time deadly force was used, Plaintiff was slowing down to a
22 stop...” (Opposition at 2). Yet, without having more information and factual
23 content of what the officers were faced with prior to the foot pursuit and the officer
24 involved shooting, Plaintiff’s allegation that he was slowing down to a stop,
25 without more, does not mean anything and does not prove that Plaintiff was a “non-
26 threatening subject.”

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1 Officers are not required to use the least amount of force possible; rather, the
2 force employed must be reasonable under all relevant circumstances. See *Forrester*
3 *v. City of San Diego*, 25 F.3d 804, 806 (9th Cir. 1994). Plaintiff's FAC lacks facts
4 concerning all relevant circumstances here. Thus, based on the foregoing, as well as
5 the points raised in Defendants' Motion to Dismiss, Officer Irick is entitled to
6 qualified immunity and their motion should be granted.

7 **B. Plaintiff Fails to Allege Facts Sufficient to Support a Battery
8 Claim**

9 Plaintiff's battery claim against State Defendants cannot be established unless
10 he proves that Officer Irick used unreasonable force against him. See *Saman v.*
11 *Robbins*, 173 F.3d 1150, 1156-57, fn. 6 (9th Cir. 1999). Since Plaintiff has failed to
12 allege sufficient facts necessary to establish a plausible claim that Officer Irick used
13 unreasonable force against him, his battery claim against State Defendants should
14 be dismissed.

15 **C. Plaintiff Fails to Allege Facts Sufficient to Support a Negligence
16 Claim**

17 In support of his negligence claim, Plaintiff argues that, under the totality of
18 the circumstances, the Court could find that Officer Irick's pre-shooting conduct
19 alone, was negligent. (Opposition at pg. 10) Yet the FAC omits facts demonstrating
20 what the totality of the circumstances surrounding the officers were, as well as any
21 facts relating to the Defendant Officers' pre-shooting conduct. Instead, the FAC
22 merely alleges that prior to the shooting, the Defendant Officers were pursing
23 Plaintiff on foot. (FAC at ¶25).

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1 Additionally, Plaintiff's analysis of vicarious liability against Defendant State
2 for failure to train, oversee, and discipline subordinates is misguided. Several
3 United States District Courts, including the Central District, have found that no
4 state statutory basis exists for a claim that a municipality is directly liable for the
5 negligent hiring, supervision, or training of its police officers, consistent with
6 *Munoz v. City of Union City*, 120 Cal.App.4th 1077, at 1113 (2004). Plaintiff
7 argues, however, that he has not alleged direct liability against Defendant State, but
8 vicarious liability. (Opposition at pg. 16.) Nonetheless, Plaintiff's claim still fails as
9 a matter of law.

10 In *Megargee ex rel. Lopez v. Wittman*, No. CVF 06-0684 AWI LJO, 2006
11 WL 2988945, at *10 (E.D. Cal. Oct. 17, 2006), the Eastern District recognized that
12 section 815.2 of the California Government Code "makes a public entity liable for
13 its employee's negligent acts or omissions within the scope of employment."
14 *Eastburn v. Regional Fire Protection Auth.*, 31 Cal.4th 1175, 1180 (2003). The
15 court noted, however, that "liability of the employer only attaches if and when it is
16 adjudged that the employee was negligent," and, although "public entities always
17 act through individuals, that does not convert a claim for direct negligence into one
18 based on vicarious liability." *Id.*; see also *Munoz*, 120 Cal.App.4th at 1113-114;
19 *Sanders v. City of Fresno*, No. CIVA 05-0469 AWI SMS, 2006 WL 1883394 at *9
20 (E.D. Cal. July 7, 2006). Similarly, in *Reinhardt v. Santa Clara County*, No. C05-
21 05143 HRL, 2006 U.S. Dist. LEXIS 14626 (N.D. Cal. March 15, 2006), plaintiffs
22 alleged a claim against public entities for failure to train and supervise. The
23 *Reinhardt* court noted that the plaintiffs had not pointed to a statute that imposed a
24 duty, and that Government Code § 815.2 only imposed vicarious liability for acts of
25 an employee. *Id.*, at *6. Citing *Munoz*, the district court held, "[f]ailure to train,
26 however, is a 'direct' act on the part of the entity, not on the part of the employee."
27 *Reinhardt*, 2006 U.S. Dist. at *6 (N.D. Cal. 2006).

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1 Additionally, the cases cited in State Defendants' motion to dismiss, including
2 *de Villers v. County of San Diego*, 156 Cal.App.4th 238, 263 (2007), clearly
3 outlines that in the absence of a special relationship, a public entity, such as CHP,
4 cannot be held vicariously liable for negligent training, overseeing, and discipline
5 of subordinates. This district outlined the necessity of a special relationship for this
6 type of claim to survive in *H.B. v. City of Torrance* No. CV1702373 SJO GJS, 2017
7 WL 10518108 at *4-5 (C.D. Cal. Aug. 16, 2017). There, the court noted that a
8 claim based on negligent hiring is generally "one of direct liability for negligence,
9 not vicarious liability" since liability for negligent hiring "requires some nexus or
10 causal connection between the principal's negligence in selecting or controlling an
11 actor, the actor's employment or work, and the harm suffered by the third party."
12 *Id.*, at *5 (quoting *Phillips v. TLC Plumbing, Inc.*, 172 Cal. App. 4th 1133, 1139
13 (2009)). The *H.B.* court noted that the Supreme Court of California has held that in
14 special circumstances a public entity can be held vicariously liable for negligent
15 hiring and supervision by its employees. *Id.*; see *C.A. v. William S. Hart Union*, 53
16 Cal. 4th 861, 865 (2012). However, to establish vicarious liability for negligent
17 hiring, a plaintiff must establish that "supervisory and administrative" employees of
18 the government entity "knew or had reason to know of [an employee]'s dangerous
19 propensities and acted negligently in hiring, supervising and retaining [him or] her."
20 *C.A. v. William S. Hart Union*, 53 Cal. 4th at 868-69. As in any action for
21 negligence, the Plaintiff must also establish that the tortfeasor had a duty of care to
22 the victim, and that the breach of this duty caused the victim's harm. *Id.* at 876.
23 "Absent such a special relationship, there can be no individual liability to third
24 parties for negligent hiring, retention, or supervision of a fellow employee, and
25 hence no vicarious liability under section 815.2." *H.B. v. City of Torrance*, No.
26 CV1702373 SJO GJS, 2017 WL 10518108, at *3 (C.D. Cal. Aug. 16, 2017).

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1 Plaintiff has not alleged that any special relationship existed between him and
2 the Defendant Officers that would give rise to this negligence theory. Since a
3 special relationship did not exist at the time of the officer-involved shooting, CHP
4 cannot be liable for Plaintiff's failure to train, oversee, and discipline subordinates'
5 negligence claim. As such, Plaintiff's sixth cause of action for negligence against
6 State Defendants should be dismissed.

7 **D. Plaintiff Fails to Allege Facts Sufficient to Support a Bane Act
8 Claim**

9 Finally, Plaintiff's FAC lacks allegations regarding the State Defendants'
10 specific intent to violate Plaintiff's rights or reckless disregard for his constitutional
11 rights. Moreover, Plaintiff fails to plead with particularity facts sufficient to draw a
12 reasonable inference that State Defendants acted "with the particular purpose" of
13 violating his constitutional rights. See *Cornell*, 17 Cal.App. 5th, at 803. *Cornell*
14 held that "the egregiousness required by Section 52.1 is tested by whether the
15 circumstances indicate the arresting officer had a specific intent to violate the
16 arrestee's right to freedom from unreasonable seizure." *Id.* at 384.

17 Plaintiff does not provide any allegations evincing the required special intent
18 on part of Officer Irick. Plaintiff's allegations are nothing but conclusory statements
19 that State Defendants intended to violate his rights and/or acted with reckless
20 disregard to his constitutional rights, without more. Accordingly, Plaintiff's seventh
21 cause of action against the State Defendants fails to state a claim and should be
22 dismissed.

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III. CONCLUSION

Based on the foregoing, as well as the points and arguments addressed in State Defendant's moving papers, the State Defendants respectfully request that the Court grant their Motion to Dismiss Plaintiff's First Amended Complaint.

Dated: April 25, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name: *Gonzalez v. State of California,
et al.* No. **5:25-cv-00331-KK-DTB**

I hereby certify that on April 25, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STATE DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 25, 2025, at Fresno, California.

C. Vue
Declarant

/s/ C. Vue
Signature

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